

CAMILLA HRDY ANSWERS

1. What is the difference between “economic” and commercial value?
A. Economic value = potential commercial value.
2. Why require “independent” economic value?
A. To emphasize that the value of the information should derive from its secrecy.
3. Who are the “other persons” who could obtain value from the information?
A. Actual or potential competitors.
4. Why is the reference to actual or potential competitors plural?
A. To reflect the reality that there usually is more than one.
5. Why did Congress go with the singular?
A. I have no idea. It is not likely to be an important change.
6. Is “potential” meant to include everything of hypothetical value?
A. No.
7. How does “independent economic value” relate to “competitive advantage”?
A. They are similar concepts.
8. Is “more than trivial” independent economic value enough?
A. Yes.
9. Should the Restatement (First) factors influence the interpretation of “independent economic value”?
A. Yes.
10. To what extent is “sweat labor” relevant to proving “independent economic value”?
A. “Sweat labor” is some evidence of independent economic value.
11. Sharon Sandeen Qs. Please give me a cite for Sharon’s comments.



Outlook

Fwd: Interview with you regarding independent economic value?

From Dickinson, Gregory <GDickinson@STU.EDU>**Date** Sun 1/18/2026 9:01 AM**To** Gregory Dickinson <gdickinson3@unl.edu>

1 attachment (14 KB)

CAMILLA HRDY ANSWERS.docx;

Caution: Non-NU Email

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----- Forwarded message -----

From: Camilla Alexandra Hrdy <cahrdy@gmail.com>**Date:** Jan 18, 2026 7:13 AM**Subject:** Fwd: Interview with you regarding independent economic value?**To:** "Dickinson, Gregory" <GDickinson@STU.EDU>**Cc:**

Professor Camilla A. Hrdy
Rutgers Law School
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Papers available at: https://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=1687909

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From: **Dole, Richard F** <DDole@central.uh.edu>**Date:** Mon, Dec 14, 2020 at 3:04 PM**Subject:** RE: Interview with you regarding independent economic value?**To:** Camilla Alexandra Hrdy <cahrdy@gmail.com>

Camilla, I hope that I have answered all your questions but probably raised others. However, I am busy now and do not have time for a full exchange of views. Thank you for the inquiries. I liked your University of Pennsylvania Response. Richard Dole

From: Camilla Alexandra Hrdy [mailto:cahrdy@gmail.com]
Sent: Monday, December 14, 2020 9:10 AM
To: Dole, Richard F <DDole@Central.UH.edu>
Subject: Re: Interview with you regarding independent economic value?

Hi Richard,

Good morning! Just checking in to see whether you'd be willing to set up a time to talk. Thank you again!

Camilla

On Sat, Dec 5, 2020 at 1:13 PM Camilla Alexandra Hrdy <cahrdy@gmail.com> wrote:

Dear Richard,

Here are the specific questions I'd like to ask you about "independent economic value." I'd love to have a more free flowing discussion, but these are the key bullet points.

Please don't feel any obligation to prepare a detailed response! I am simply interested in your views and in some ways, the more off-the-cuff your response is, the better. That said, if you have ideas for further research for me to do, I'd love to hear it.

I have a very flexible schedule in the coming weeks, so just let me know what is a good time that works for you. I truly appreciate this and look forward to speaking with you.

Sincerely,

Camilla

Statutory Text (for your reference, not that you need it!):

The Defend Trade Secrets Act (DTSA) provides, in relevant part, that a trade secret has to derive "independent economic value, actual or potential" from not being generally known," or "readily ascertainable" using "proper means," to "another person" who could themselves obtain "economic value" from disclosing or using the information.

18 USC 1839(3):

"the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information[.]"

The Uniform Trade Secrets Act (UTSA), on which the DTSA is based, contained nearly identical "independent economic value" language, except it used the phrase "other persons" instead of the singular "another person."

UTSA, § 1:

"derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use[.]"

Questions on statutory "independent economic value" text:

In drafting the UTSA, certain terms, noted below, were used that can have multiple or unclear interpretations. ***What is your sense of what they meant to the drafters? Are courts applying them in the way intended?***

"Economic" value -

Some question as to whether means "commercial" or if there is any difference there. What's your sense of what is NOT "economic" enough? e.g. information of mere spiritual value, information whose disclosure would threaten reputational harm (e.g. meat packing plant spying cases)

"Independent" -

What was the purpose of including this word? was it simply to emphasize the value of the information has to come from secrecy?

"...To Other Persons..." -

The UTSA provides that to be a protectable trade secret, must "derive[] independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use..."

Who were these "other persons" to whom claimed information must impart the requisite value?

The UTSA Commentary stated that a trade secret must derive its value by virtue of the fact that it is being kept secret from "the principal persons who can obtain economic benefit from information..." But this apparently initially was singular "principal person" and changed to plural. ***Why was this change made? What was the context?***

The UTSA Commentary states that [t]he language 'not being generally known to and not being readily ascertainable by proper means by other persons' does not require that information be generally known to the public for trade secret rights to be lost. If the principal ~~person~~ persons who can obtain economic benefit from information ~~is~~ are aware of it, there is no trade secret. A method of casting metal, for example, may be unknown to the general public but readily known within the foundry industry.

"To Another Person" -

Now the DTSA has gone to the singular "another person." The analogous provision in the DTSA says information must derive independent economic value from being unknown to "another person who can obtain economic value from the disclosure or use of the information[.]"

Why do you think Congress in the DTSA went with the singular "another person"? What cases or arguments influenced this decision? Does the change make it EASIER to prove information

has the requisite value? (For example, if only a single departing employee could find value in it, the information could potentially derive the requisite value?)

"Potential" Value -

Why did the UTSA (and DTSA also) use the word "potential"? What is the impact of this?

Both the UTSA and the DTSA allow that the economic value of a trade secret can be "actual or **potential** ..." Some commentators have made much of the term "potential," suggesting this indicates that the trade secret owner can protect practically anything, because practically anything has at least "potential" economic value. As Eric Claeys puts it, "[b]ecause the Act focuses on **potential** economic value without any reference to use, claimants who satisfy the other elements of trade secrecy are entitled to be free from misappropriation whether or not they deploy their secrets for commercial advantage."

I had thought the word "potential" was more about enforcing the elimination of the "use" requirement and ensuring the trade secret can protect information earlier in the stages (The Commentary makes clear that "[t]he broader definition in the proposed Act extends protection to a plaintiff who has not yet had an opportunity or acquired the means to put a trade secret to use.") So I thought "potential" was *not* intended to mean almost anything can be protectable because it has merely hypothetical value. ***What are your thoughts -- was "potential" meant to encompass anything hypothetically of value?***

Questions on Common Law Antecedents to Independent Economic Value

To your recollection, how does the independent economic value interact with the following common law concepts?

"Competitive advantage"-

Many courts and commentators have implied that the independent economic value to refer to the common law concept of "competitive advantage," sometimes referred to as "economic advantage" or "business advantage." The Restatement (Third) of Unfair Competition ("Third Restatement") defines the "competitive advantage" as: "A trade secret must be of sufficient value in the operation of a business or other enterprise to provide an actual or potential economic advantage over others who do not possess the information."

See 1 MILGRIM ON TRADE SECRETS § 1.07A (2020) ("...**competitive advantage** is the touchstone..."); see also *Electro-Craft Corp. v. Controlled Motion, Inc.*, 332 N.W.2d 890, 900 (Minn. 1983) ("This statutory element carries forward the common law requirement of **competitive advantage**."); *Religious Tech. Ctr. v. Wollersheim*, 796 F.2d 1076, 1090 (9th Cir. 1986) (same); *Morlife, Inc. v. Perry*, 56 Cal. App. 4th 1514, 1522, 66 Cal. Rptr. 2d 731, 736 (1997) (must provide "a '**substantial business advantage**.' "); *Yield Dynamics, Inc. v. TEA Sys. Corp.*, 154 Cal. App. 4th 547, 564, 66 Cal. Rptr. 3d 1, 17–18 (2007) ("...sufficiently valuable and secret to afford an actual or potential **economic advantage** over others.") (quoting Rest.3d, Unfair Competition, § 39.). See also *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1012 (1984) ("The economic value of that property right lies in the **competitive advantage** over others that Monsanto [the trade secret owner] enjoys by virtue of its exclusive access to the data...").

Is it true that independent economic value was intended to codify the concept of "competitive advantage"? What in your view is the similarity or difference between "independent economic value" and "competitive advantage"?

"More than Trivial" Standard -

Relatedly, the Restatement (Third) of Unfair Competition uses the language "more than trivial" to describe how much of an advantage a trade secret must impart. ***Does this "more than trivial" standard comport with your view of the independent economic value threshold?***

The Restatement (Third) of Unfair Competition states in relevant part that: "The advantage, however, need not be great. It is sufficient if the secret provides an advantage that is **more than trivial**." Although a trade secret can consist of a patentable invention, there is no requirement that the trade secret meet the standard of inventiveness applicable under federal patent law." The Restatement (Third) of Unfair Competition, § 39 cmt. (e). Requirement of value.

"Use" -

Was independent economic value in some ways intended as a substitute for the common law's old "use" requirement?

First Restatement of Torts Factors -

How much influence do or should the First Restatement factors have on how we interpret "independent economic value"?

The Restatement (First) of Torts lists six factors to assess whether a trade secret exists, two of which relate to **value**. The fourth factor is "... (4) the value of the information to the plaintiff's business and to its competitors[.]" The fifth factor is "(5) the amount of time, effort and money expended by the plaintiff in developing the information[.]" Restatement (First) of Torts § 757.

To what extent should "sweat labor" (time, effort, and money spent by plaintiff to develop the secret) be relevant for proving independent economic value?

Tangibility Requirement -

Was independent economic value intended as an alternative to a "tangibility" requirement?

Sharon Sandeen has written that the UTSA's drafters initially sought to add a "tangibility" requirement to trade secret law, which would have required the information to be written down or codified in a tangible form. She suggests that the independent economic value was seen in some sense an *alterative* to tangibility. As with tangibility, its purpose was "to increase the plaintiff's burden of proof in order to ensure that a claim for relief was not provided for illusory information or information of little import." ***What are your thoughts on this?***

Sandeen cites a statement by you to support this view -- what did you mean when you said this?

"[a] lot of mailing lists are not trade secrets. They aren't important enough. They may be stamped 'secret,' but they may not be sufficient to confer a competitive advantage and would not qualify as trade secrets under our act."

quoting Richard Dole, one of the drafters of the UTSA, in Transcript of Proceedings of the National Conference of Commissioners of Uniform State Laws, Annual Conference in its 81st Year, Uniform Trade Secrets Protection Act, Amfac Hotel, Minneapolis, Minnesota (Aug. 5, 1985), at 11).

On Thu, Dec 3, 2020 at 2:18 PM Camilla Alexandra Hrdy <cahrdy@gmail.com> wrote:

Thank you!!

Absolutely. That is a great idea. I'll send you some specific bullet points shortly and we can go from there. Looking forward to learning from you!

Sincerely,

Camilla

On Thu, Dec 3, 2020 at 2:14 PM Dole, Richard F <DDole@central.uh.edu> wrote:

Dear Professor Hrdy, Happy to speak with you. Would it be convenient for you to send me the specific issues about the independent economic value requirement that interest you? Richard Dole

From: Camilla Alexandra Hrdy [mailto:cahrdy@gmail.com]

Sent: Monday, November 30, 2020 11:26 AM

To: Dole, Richard F <DDole@Central.UH.edu>

Subject: Interview with you regarding independent economic value?

Dear Professor Dole,

I hope this email finds you well. I am a professor at University of Akron School of Law. We met very briefly at an IP conference a few years ago -- so briefly I doubt you'll remember!

I am writing [articles](#) in the trade secrets area, currently on the independent economic value requirement. If you are willing, I would love to interview you over the phone with respect to your involvement in the drafting of the Uniform Trade Secrets Act. Both my colleagues Victoria Cundiff and Sharon Sandeen say you are the one to speak to. I have read several of your articles on trade secrets (including [Contours of American Trade Secret Law](#) article, your [Preemption](#) article, and your phenomenal [Contract Exception](#) article), and contemporaneous statements by you that are quoted in Prof. Sandeen's [2010 article](#). But I suspect there is much more that I could learn from speaking with you directly.

Would you perhaps be willing to speak with me?

App. 9

Sincerely,

Camilla A. Hrdy

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